

USCOLSALASEEM/COL/01/2023-D2En
ORIGINAL: Spanish

**Determination in accordance with Article. 18.8(4) of the
United States-Colombia Trade Promotion Agreement**

Submitter: Iván Salazar Penna
Party: Colombia
Submission ID: USCOLSALASEEM/COL/01/2023
Date of the submission: June 28, 2023
Date of the determination: December 13, 2023

1. Introduction

The United States of America (hereinafter referred to as "U.S." or the "United States") and Colombia (hereinafter collectively referred to as the "Parties" and individually to as the "Party"), signed on November 22nd, 2006, the Trade Promotion Agreement (hereinafter referred to as "TPA") and on June 28th, 2007, signed an Amending Protocol to the same Agreement. Once the internal procedures for its ratification were completed and the implementation phase was finalized, the TPA came into force on May 15, 2012.

The U.S.-Colombia TPA included a chapter on the environment (hereinafter "Chapter Eighteen"). In particular, Article 18.8 of that TPA established a mechanism for filing submissions on environmental enforcement matters, by virtue of which, any person may file a submission asserting that a Party is failing to effectively enforce its environmental laws. Furthermore, said article provided that the Parties shall designate a Secretariat or other appropriate body to which submission on environmental enforcement matters will be filed. Likewise, Article 18.9 of the TPA sets out the preparation and development of factual records by the Secretariat, if any member of the Environmental Affairs Council¹ established under Articles 18.6.1 of the TPA², instructs it to do so.

The Parties through an Agreement of July 2018, established the Secretariat for Environmental Enforcement Matter (hereinafter referred to as the "Secretariat") and designated it to carry out the functions prescribed for the Secretariat in articles 18.8 and 18.9 of the TPA.

2. Background

On June 28, 2023, Iván Salazar Penna, a citizen of Colombia named filed a submission on environmental enforcement matters via electronic mail under Article 18.8 of the TPA, in which he asserts that the Colombian Government is failing to effectively enforce its environmental laws regarding the Civil Society Nature Reserve El Danubio.

¹ In accordance with article 18.6.1 of the TPA, each Party shall designate "a senior level official with environmental responsibilities to represent it on the Council and an office in its appropriate ministry or government entity to serve as its contact point for carrying out the work of the Council".

² Agreement establishing a Secretariat for Environmental Enforcement Matters under the United States-Colombia Trade Promotion Agreement.

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After registering the submission as "Reserva Natural de la Sociedad Civil – El Danubio" and assigning it the filing number USCOLSALASEEM/COL/01/2023, the Secretariat acknowledged receipt via email on July 18, 2023 with communication number USCOLSALASEEM/COL/01/2023-S1Esp.

On September 18, 2023, the Secretariat determined that submission USCOLSALASEEM/COL/01/2023 complied with the admissibility requirements contained in Article 18.8(2) of the TPA.

In accordance with the submission on environmental enforcement matters process outlined in Articles 18.8 and 18.9 of the TPA, when the Secretariat determines that a submission meets the requirements set out in Article 18.8(2) of the TPA, the Secretariat shall determine whether the submission merits requesting a response from the Party. This determination is guided by the criteria established in Article 18.8(4) of the TPA.

Before analyzing the criteria of Article 18.8(4) of the TPA, a brief summary of the submission USCOLSALASEEM/COL/01/2023 is provided.

3. Summary of the submission

According to the Submitter, the Colombian Government is failing to effectively enforce its environmental laws regarding the Civil Society Nature Reserve ("RNSC" by its Spanish acronym or the "Reserve") El Danubio located in the village of Caldas in the municipality of Morelia, Department of Caquetá. The National Natural Parks Agency registered this RNSC by Resolution 008 of February 14, 2020 for the property called "El Danubio", Identified with real estate registration folio numbered 420-26142.

The submitter, as the owner of the RNSC El Danubio, asserts that the Government of Colombia is failing to effectively enforce Article 11 of Decree 1996 of 1999³ due to the lack of notice and consultation of the works under the Solidarity Agreement No. 026-CNVS-2022 dated November 17, 2022, entered into the municipality of Morelia and the Community Action Committee (Junta de Acción Comunal) of the Caldas village, related to the adaptation of the sanitation facilities at the Palmarito educational institution. The submitter states that the educational institution is located within the RNSC El Danubio, and its status as a protected area and higher environmental criteria for land use planning (*determinante ambiental*), were not taken into account. The submitter also expresses his concern about possible environmental impacts due to the passage of people and, motorcycles, as well as the effect this is having on species that he has been protecting and conserving, and its strategic importance as headwater of water sources, which feed the Morelia aqueduct.

³ Article 11 of Decree 1996 of 1999, compiled in Article 2.2.2.1.17.11 of Regulatory Decree 1076 of 2015, states that holders of duly registered Civil Society Natural Reserves may exercise the following rights: "1. Right to participate in the planning processes of development programs. 2. Prior consent for the execution of public investments affecting them. 3. Right to incentives. 4. Any other participation rights established by law."

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Additionally, the submitter alleges that with the project "construction of aqueduct network and drinking water treatment plant for the urban area of the municipality of Morelia", the Colombian government is failing to effectively enforce Article 11 of Decree 1996 of 1999, regarding the rights of the holders of the RNSC. The submitter, as the holder of the Danubio Reserve, asserts that he was not informed or consulted about said project, which would be carried out in the transition zone within 30 meters surrounding the margins of the water source that is part of the RNSC El Danubio.

Likewise, the submitter raises his objections due to the lack of feasibility of the water concession permit for the continuation of the previous project, as well as its impact on the MURUI-YU-PAHUER indigenous community and deficiencies in the technical studies. The submitter also mentions that he has reported the logging of forest species within the RNSC El Danubio.

As a result of the complaints made to various authorities, the submitter expresses allegations of pressure and persecution.

4. Analysis of the criteria established in Article 18.8(4)

The Secretariat must consider the following four criteria established in Article 18.8(4) of the TPA, to determine whether the submission merits requesting a response from the Party.

a. The submission is not frivolous and alleges harm to the person making the submission;

In the submission USCOLSALASEEM/COL/01/2023, the submitter asserts that the Government of Colombia is failing to enforce Article 11 of Decree 1996/1999 (now Article 2.2.2.1.17.11 of Decree 1076/2015) because he was not informed about and consulted on:

- (i) The works of the Solidarity Agreement No. 026-CNVS-2022/November 17, 2022, between the municipality of Morelia and the Caldas village Community Action Board, pertain to the adaptation of the sanitation facilities at the Palmarito educational institution.
- (ii) The project "Construction of aqueduct network and drinking water treatment plant for the urban area of the municipality of Morelia."

As support for being the titleholder, the submitter provided Resolution 008/February 14, 2020, from the Ministry of Environment and Territorial Development – National Natural Parks of Colombia. This resolution registered the El Danubio RNSC RBSC-160-18 in favor of the property known as "El Danubio," which is recorded under real estate registration listing 420-26142, of which the submitter appears as the owner according to the property history certificate.

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Furthermore, in the technical report by Corpoamazonia No. 1343/December 22, 2022⁴, such environmental authority confirmed the Palmarito educational institution situated within the grounds of the El Danubio RNSC. Likewise, in the aforementioned technical concept, "the construction of sanitation facilities (sink, urinal, and bathroom) was evidenced," confirming the protected area status and its environmental criteria for land use planning (*determinante ambiental*), as asserted by the submitter of the El Danubio RNSC.

Concerning the "construction of an aqueduct network and drinking water treatment plant for the urban area of the municipality of Morelia," the submission indicates a disregard for Article 11 of Decree 1996 of 1999. It highlights that "the property holders were not notified despite being an environmental criterion within the transitional zone of 30 meters around the margins of the water source belonging to the El Danubio natural reserve."

On the other hand, the submission also references to the "investigation of the logging that took place in El Danubio Nature Reserve for environmental damage," which was filed to the Attorney General's Office. In this regard, technical report by Corpoamazonia No. 1343/December 22, 2022, established that "trees belonging to El Danubio RNSC 160-18 Civil Society Nature Reserve were pruned and cut down". Additionally, in technical report by No. 0025/February 10, 2023 prepared after a subsequent visit by Corpoamazonia the RNSC El Danubio, it was indicated that "the clearing was conducted to establish electrical grids and supply energy to the Palmarito school located within the El Danubio, as demonstrated by the traceability of clearing in the direction of electrical grids."

Based on these considerations, the Secretariat considers that the submission is not frivolous and provides evidence of environmental harm alleged referred by the submitter. Therefore, This Secretariat concludes that the submission satisfies the criterion outlined in letter (a) of Article 18.8 (4) of the TPA.

b. The submission, alone or in combination with other submissions, raises matters whose further study in this process would advance the goals of the Environment Chapter of the TPA and the Environmental Cooperation Agreement (ECA), taking into account guidance regarding those goals provided by the Council and the Environmental Cooperation Commission established under the ECA;

As per the environmental chapter of the TPA, the goals of Chapter Eighteen include:

[C]ontribute to the Parties' efforts to ensure that trade and environmental policies are mutually supportive, to promote the optimal use of resources in accordance with the objective of sustainable development, and to strive to strengthen the links between the Parties' trade and environmental policies and practices, which may take place through environmental cooperation and collaboration.

Furthermore, the Agreement on Environmental Cooperation stipulates that its objective is to:

⁴ Technical assessment conducted during the site visit to the Palmarito school on December 15, 2022, prompted by the environmental complaint filed by the submitter.

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[E]stablish a framework for strengthening bilateral and/or regional environmental cooperation between the Parties aimed at enhancing environmental protection and the conservation and sustainable use of natural resources, including through the development and improvement of environmental practices and technologies.

The Secretariat believes that the submission raises matters whose further study in this process would advance the goals outlined in Chapter Eighteen of the TPA and the ECA. Specifically, addressing the issues raised in the submission would advance the promotion of the optimal use of resources in accordance with the objective of sustainable development within the El Danubio RNSC, while enhancing environmental protection and the conservation and sustainable use of natural resources. Accordingly, the Secretariat concludes that the submission satisfies Article 18.8(4)(b) of the TPA.

c. Private remedies available under the Party's law have been pursued;

In accordance with the submission and the accompanying documentation, the submitter has filed rights of petition⁵ and complaints before several authorities, including entities such as the Corporación para el Desarrollo Sostenible del Sur de la Amazonía Colombiana - Corporation for the Sustainable Development of Southern Amazonia (Corpoamazonía by its Spanish acronym), the Ministry of Environment and Sustainable Development, and the Ministry of Housing, City and Territory. He has also filed petitions with regional-level entities such as the Mayor's Office of Morelia and the Governor of Caqueta's department, as well as oversight bodies such as the Office of the Comptroller General of the Republic and the Public Ministry (including the office of the Procurator General, and the Municipal Ombudsman).

Furthermore, the submitter has provided a copy of the complaint filed on December 15, 2022, with the Morelia Police Inspector regarding the disturbance to possession. The complaint alleges "alterations in a protected area without notifying its owners, generating unrest in the area," as well as "damages within the property and protected area, altering the ecosystem of flora and fauna with the noises of motorcycles and personnel in the vicinity." In the claims, the submitter has suggested "restoring the property to its original state" and has requested an order not to "intervene in the protected area without legal agreement from the owner."

Similarly, the submitter stated that he lodged a criminal complaint with the Attorney General's Office concerning the "[c]learing of trees in El Danubio Nature Reserve for environmental damage and crimes against public administration."⁶

Finally, with respect to this criterion, the submitter notes in the submission that, although remedies have been requested, "there has been no progress by the relevant entities."

⁵ Article 23 of the Political Constitution of Colombia, regulated by Law 1755 of 2015 establishes the fundamental right of every person to file respectful petitions to authorities for reasons of either general or private interest and the right to obtain a prompt and comprehensive decision thereon.

⁶ The submitter included an email among the documentation filed, wherein the Attorney General's Office provides details about the complaint filed.

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The Secretariat concludes that the submission satisfies the criterion outlined in letter (c) of Article 18.8(4) of the TPA since the submitter has provided documentation and information demonstrating he has sought remedies available under Colombian law.

d. The submission is drawn exclusively from mass media reports

According to the information provided, the Secretariat considers that the submission has not been taken exclusively from mass media reports. The submission is based on documentation and information provided by the submitter, gathered in large part from complaints, and petitions filed directly by him.

Therefore, the Secretariat finds that the submission meets the criterion outlined in letter d) of Article 18.8(4) of the TPA.

5. Determination of the Secretariat

Due to the reasons outlined and in accordance with the provisions of Article 18.8(4) of the TPA, the Secretariat determines that the USCOLSALASEEM/COL/01/2023 submission merits a response from the Government of Colombia concerning effective enforcement of the environmental law asserted by the submitter, specifically with respect to Article 11 of Decree 1996 of 1999 (now Article 2.2.2.1.17.11 of Decree 1076 of 2015).

In adherence to Article 18.8(5) of the TPA, the Party shall advise the Secretariat:

- (a) Whether the precise matter at issue is the subject of a pending judicial or administrative proceeding;
- (b) Any other information the Party wishes to submit, such as:
 - (i) Whether the matter was previously the subject of a judicial or administrative proceeding,
 - (ii) Whether private remedies in connection with the matter are available to the submitter and whether they have been pursued, or
 - (iii) Information concerning relevant capacity-building activities under the ECA.

In accordance with Article 18.8(5) of the TPA, the Party may provide a response to the submission within forty-five (45) days of receiving of this determination, i.e., on January 27, 2023. In exceptional circumstances and on notification to the Secretariat, the Party may provide a response within sixty (60) days of delivery of the request, that is, no later than February 10, 2023.

The submitter and the Environmental Affairs Council shall be notified of this determination. A copy of this submission and any publicly supporting information accompanying it, has been previously forwarded to the Party for the necessary purposes.

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(Original signed)

David Marín Cortés
Executive Director

Secretariat for Environmental Enforcement Matters

U.S. - COLOMBIA TRADE PROMOTION AGREEMENT

C.C. Sarah Flores, Department of State - U.S.
Sigrid Simpson, Office of the U.S. Trade Representative
Daniela Almario, Ministry of Environment and Sustainable Development - Colombia.
Laura Constanza Hernández, Ministry of Commerce, Industry and Tourism Colombia
Submitter